

Report to the General Assembly: Nursing Home Inspection and Enforcement Activities

A Report to the 112th Tennessee General Assembly

**Tennessee Department of Health
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Executive Summary:

This report addresses activities and outcomes under both state and federal laws and rules. The Office of Health Care Facilities (OHCF) for the Tennessee Department of Health, through the Board for Licensing Health Care Facilities, annually licenses nursing homes, among other facility types. As the contracted survey agency for the Center's for Medicare and Medicaid Services (CMS), OHCF also federally certifies health care facilities currently participating or seeking participation in the CMS program. In this role, OHCF conducts annual or initial surveys and complaint investigations to ensure compliance with state and federal statutes and regulations.

Complaints

All complaints received by OHCF for the 319 state licensed nursing homes, of which 316 are federally certified, are monitored and maintained on a federal proprietary software program.

- In 2020, among all facility types, approximately 67% (1,583) of the 2,365 total complaints were complaints against nursing homes.
- The percentage of nursing homes with at least one substantiated complaint decreased by 11.5% to 34.5%. This decrease is presumably due to the suspension of all facility complaint investigations with the exception of those potentially causing serious resident harm, impairment, or death.
- The average number of health deficiency citations per standard annual survey was 3.1, (relatively unchanged from previous year); below both the national and regional averages of 6.4 and 3.8 respectively.
- Twenty-six (26) providers had zero health deficiencies, a significant decrease from last year's (57) zero health deficient free facilities⁴.
- Seventeen (17) providers (5.3%) were cited for substandard quality of care – up from 4.0% last year.⁵
- 2020 budgeted expenditures for nursing home inspection and enforcement activities were 10.7M, with 3.46M (~32%) being the State's share.

Deficiencies

Deficiencies cited in nursing home facilities in the state of Tennessee for 2020 were relatively consistent with the pattern of deficiencies cited across our eight southeastern states (CMS Region IV which include AL, FL, GA, KY, MS, NC, SC, and TN) and the nation.

⁴ The significant decrease can presumptively be attributed to the suspension of annual NH surveys due to the PHE resulting in no more than 6 months of active annual NH survey inspections.

- The 2019 number one most cited direct care related deficiency, Food Procurement, Storage/Prepare, was replaced by Infection Prevention & Control in 2020, understandable given the COVID-19 Public Health Emergency (PHE).
- The two most frequently cited facility life safety code deficiencies in 2020 were; (1) sprinkler system maintenance, and (2) hazardous areas – enclosures which replaced electrical equipment – power cords and extensions –as the second most frequently cited deficiency in 2019.

Nursing Home Collaborative

From its beginning in 2006, the National Nursing Home Quality Improvement Initiative (NNHQII) continued to receive CMS support through, The Advancing Excellence in America's Nursing Homes Campaign, a major initiative of the Advancing Excellence in Long Term Care Collaborative. After 12 years, Advancing Excellence in the long term care arena will continue, in principle, purpose and in scope. The initiative's name changes from time to time as it embraces new quality dimensions. This is the case as the campaign transitions from 2019 into the new 2020 decade .

New quality initiatives are being introduced through the Quality Innovation Network of Quality Improvement Organizations (QIN-QIO). The QIN-QIO, Alliant Health Solutions (AHS), will take the lead over the next 5 years in providing assistance to nursing homes and communities in small and rural practices, those serving the most vulnerable populations, and those in need of customized quality improvement, while building upon the past (12) years by Improving Behavioral Health Outcomes - Including Opioid Misuse; Increasing Patient Safety; Increasing Chronic Disease Self-Management; Increasing the Quality of Care Transitions; and Improving Nursing Home Quality.

We await specifics from CMS and Alliant Health Solutions to understand this next phase of “customized quality improvement” in Tennessee nursing homes and its impact on the quality of care/quality of life of nursing home residents within this new decade.

BACKGROUND AND SUMMARY OF THE LAW:

The Board for Licensing Health Care Facilities, which is administratively attached to the Department of Health's Office of Health Care Facilities, is the entity responsible for state licensure of nursing homes and, if necessary, the discipline thereof. Surveyors, employed by the Department of Health, inspect each licensed nursing home on an annual basis (every 9 – 15 months) and in response to complaints to ensure compliance with applicable state rules adopted by the Board for Licensing Health Care Facilities.

The Department of Health is also by designation (Section 1864 of the Social Securities Act) the survey agency for the Federal Centers for Medicare and Medicaid Services (CMS), and in that capacity Department surveyors inspect each nursing home that participates in the Medicare / Medicaid reimbursement program to ensure compliance with applicable federal laws and rules. Of the 319 nursing homes that were licensed in Tennessee in 2020, 316 were also certified by CMS to participate in the Medicare / Medicaid reimbursement program. Similar to state

licensure surveys, the Department surveys the federally certified facilities on an annual basis (every 9-15 months) as well as in response to complaints.

If a nursing home is both licensed and certified, Department surveyors will conduct the licensure and certification surveys concurrently to promote efficiency in the survey process. When Department surveyors complete a survey conducted pursuant to the federal laws and rules, the findings are reported to CMS. CMS makes the final deficiency determinations. This report addresses enforcement activities under both state and federal laws and rules.

The Department is required to investigate complaints filed by the public and any incidents that a facility reports to the Department that constitute abuse, neglect, or misappropriation of residents property (Tenn. Code Ann. § 68-11-210 (4) (b) (2) (D) (E) and § 68-11-211).

The Nursing Home Compassion, Accountability, Respect and Enforcement Reform Act of 2003 (codified at Tenn. Code Ann. § 68-1-120) requires the Department to submit a report by February 1 of each year to the governor and to each house of the general assembly regarding the Department's nursing home inspection and enforcement activities during the previous year.

COMPLAINT ACTIVITY:

The number and types of complaints received by the Department of Health are monitored and maintained on a federal software program. The software program tracks complaints on all health care facilities. The following statistical data is derived from the program:

- In 2020, there were 319 licensed nursing homes in the state of Tennessee of which 316 are federally certified.
- The Department investigated a total of 2,365 complaints (including provider self-reported incidents) during 2020 for all health care facilities, of which 380 were substantiated; an approximate 16% substantiation rate of investigated complaints in 2020; consistent with the substantiation rate range over the past three years. Overall, the Department conducted 4,069 surveys for all health care facilities in 2020 which includes annual surveys, complaint investigations, and unusual incident and revisit surveys. This compliment of 2020 surveys conducted is approximately 48% less than surveys conducted for all health care facilities in 2019. Complaints against nursing homes totaled 1,583 or 67% of the 2,365 total complaints, all facility types, which is approximately a 26.4% Increase in NH complaints compared to 2019.
- There were 292 nursing homes with at least one complaint filed, constituting approximately 91.5% of the total nursing homes.
- There were 38 nursing homes with ten or more complaints filed, constituting approximately 11.9% of the total (319) nursing homes; a decrease of almost 43%% from 2019.

- The number of nursing homes with at least one substantiated⁶ complaint:
 - 2016 – 101 nursing homes or 31.3% of the 327 nursing homes
 - 2017 – 110 nursing homes or 34.0% for the 323 nursing homes
 - 2018 – 116 nursing homes or 35.8% of the 324 nursing homes
 - 2019 – 149 nursing homes, or 46.1% of the 323 nursing homes.
 - 2020 – 110 nursing homes or 34.5% of the 319 nursing homes

The 2020 data show a significant decrease in both number and percent of nursing homes with at least one substantiated complaint. This decrease is presumably due to the COVID-19 Public Health Emergency for which both the State and Federal governments suspended all but emergency nursing home facility inspections and investigation. The state government suspension currently remains in place through February 27, 2021 through Governor Lee's Executive Order 73.

DEFICIENCIES CITED IN NURSING HOMES⁷:

Deficiencies cited in nursing home facilities in the state of Tennessee for 2020 are relatively consistent with the pattern of deficiencies cited across the eight southeastern states (CMS Region IV) and the nation. The average number of health deficiencies citations on a standard survey, per nursing home nationwide was 1.1, compared to 1.0 within CMS region IV and 0.5 in Tennessee, below both the region and national averages; with by far the largest average percentage of citations per survey occurring at scope and severity of "D" at 66.8%; (63.9% for CMS region IV and 57.9% for the nation respectively)⁸. The percentage of immediate jeopardy (IJ)⁹ citations to resident health and safety nationally was at 2.49% of the total number of nationwide health citations, a slight increase from last year (less than 1.0%). In contrast, the regional percentage of IJ citations was at 6.3% of the total number of regional health citations. All of the eight CMS Region IV states were above the national IJ citation percentage, with six of the eight Region IV states at or above both the national and regional IJ citation percentage.

The State's 2020 deficiency citation pattern, somewhat dissimilar from the State's 2019 deficiency citation pattern, with deficiency citations for Infection Prevention and Control, being the number one citation this year, and a new citation entry - facility non-reporting of cases into National Health and Safety Network, a requirement this year due to the COVID-19 - being the second most frequent citation. Four other citations on this year's list as well as last year's frequently cited deficiency list are: Development and Implementation of Comprehensive Care Plans (F656); Accuracy of Assessments (F641); Care Plan Timing and Revision (F657) and Treatment/Services to Prevent/Heal Pressure Ulcer (F686).

⁶ Onsite investigation verification of associated regulatory standard not met.

⁷ Federal S&C QCOR Database, Deficiency Count Report – Source CASPER (01/06/20)

⁸ For deficiency citations at level "D", its scope is isolated (affecting few residents), with a severity of no actual harm, and a potential for more than minimal harm that is not immediate jeopardy.

⁹ "Immediate Jeopardy" is defined as "a situation in which the provider's noncompliance with one or more requirements of participation [in the Medicare/Medicaid reimbursement program] has caused, or is likely to cause serious injury, harm, impairment, or death to a resident." 42 CFR Part 489.3

Of the 319 licensed nursing homes in Tennessee in 2020, the following was ascertained:

- There were no nursing homes in bankruptcy in 2020.
- Seventeen nursing homes were cited with substandard level of care, with (17) nursing homes cited with immediate jeopardy (IJ) citations.
- Ten (10) nursing homes were cited with Federal Civil Monetary Penalties for Immediate Jeopardies a total amount of \$1.37M; approximately \$300K below 2019 CMP total of \$1.4M.
- One (1) nursing home was cited with Type C state Civil Penalties (the lowest level reflecting no abuse or neglect to resident) for a total assessed amount of \$250.00; a significant decrease from the \$2,250 state imposed monetary penalties in 2019.
- No nursing homes had admissions suspended in 2020, consistent with 2019.
- There were no nursing homes involuntarily terminated by the Centers for Medicare and Medicaid Services (CMS) from participation in the Medicare/Medicaid programs in 2020, also consistent with 2019.
- Four (4) nursing homes ceased (voluntarily terminated) operations. Two were placed on inactive status, retaining their licenses; two completely relinquished their licenses.

TOP 15 MOST FREQUENTLY CITED DEFICIENCIES IN NURSING HOMES:

The most common deficiencies cited in nursing homes in 2020 are divided into two groups – those cited in areas related to health (quality of care of residents) and life safety (construction code compliance).

The top fifteen health and quality of care deficiencies were the following:

1. F0880 Infection Prevention & Control
2. F0884 Reporting – National Health and Safety Network
3. F0689 Free of Accident Hazards/Supervision/Devices
4. F0600 Free from Abuse and Neglect
5. F0656 Develop/Implement Comprehensive Care Plan
6. F0609 Reporting Alleged Violations
7. F0812 Food Procurement, Store/Prepare/Serve Sanitary
8. F0580 Notify of Changes (Injury/Delirium/Room, etc.)
9. F0641 Accuracy of Assessments
10. F0684 Quality of Care
11. F0610 Investigate/Prevent/Correct Alleged Violation
12. F0686 Treatment/Services to Prevent Heal/Pressure Ulcer.
13. F0657 Care Plan Timing and Revision
14. F0867 QAPI/QAA Improvement Activities Resident Records - Identifiable Information
15. F0550 Resident Right/Exercise of Rights

The top fifteen life safety code deficiencies were the following:

1. K0353 Sprinkler System - Maintenance and Testing
2. K0321 Hazardous Areas - Enclosure
3. K0324 Cooking Facilities
4. K0761 Maintenance, Inspection and Testing - Doors
5. K0918 Electrical Systems - Essential Electric System

6. K0920 Electrical Equipment – Power Cords and Extension
7. K0355 Portable Fire Extinguishers
8. K0524 HVAC – Direct – Vent Gas Fireplaces
9. K0741 Smoking Regulations
10. K0363 Corridor - Doors
11. K0372 Subdivision of Building Spaces - Smoke Barrie
12. K0781 Portable Space Heaters
13. K0211 Means of Egress – General
14. K0345 Fire Alarm System - Testing and Maintenance
15. K0521 HVAC

NURSING HOME QUALITY INITIATIVE UPDATE 2020

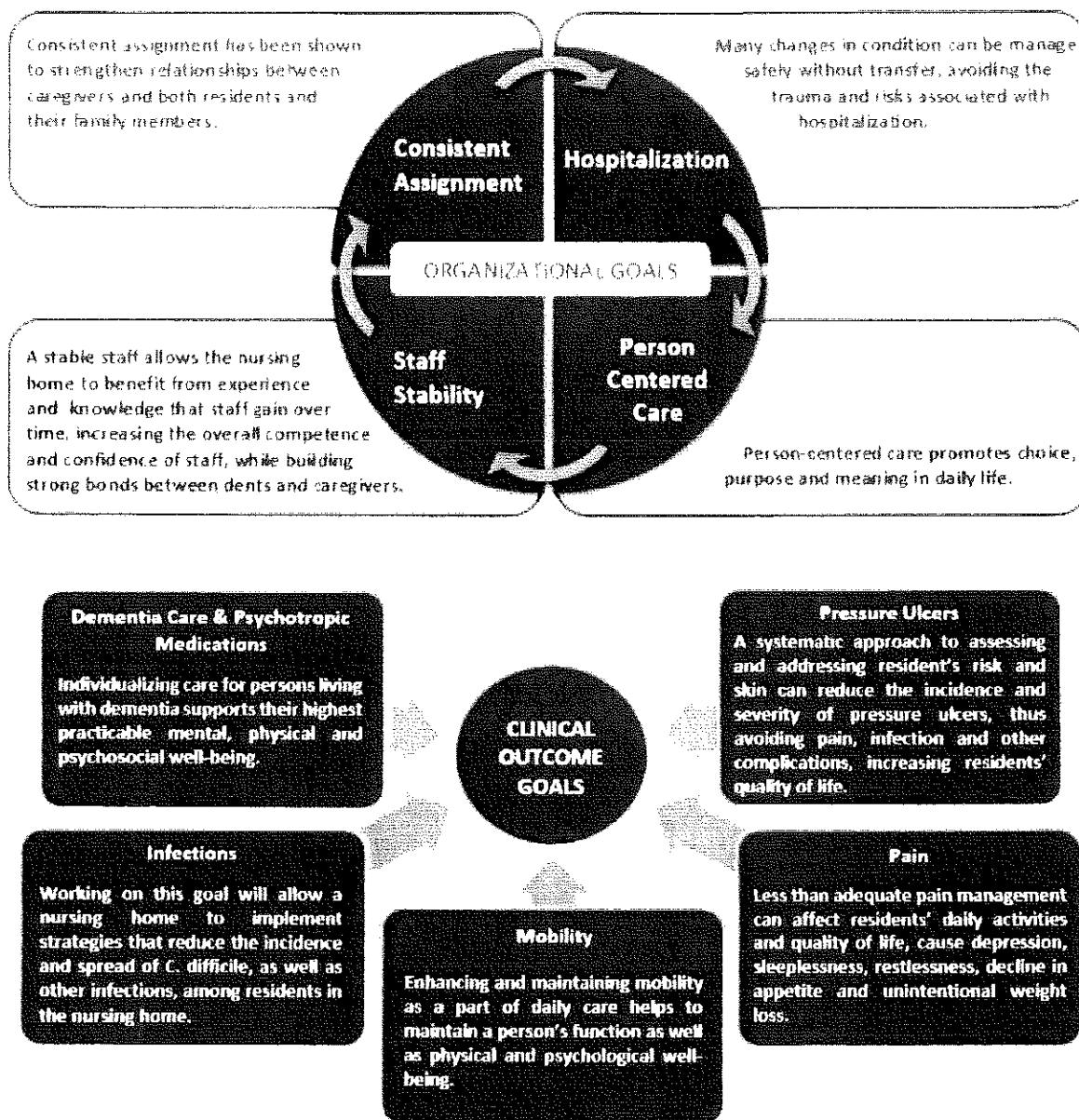
HISTORY OF THE QUALITY INITIATIVE:

In April 2006, CMS was asked to develop a plan to implement the Government Performance and Results Act of 1993 (GPRA) Goals. A major focus in that implementation was the development of regional coalitions. The CMS Region IV Office in Atlanta developed a plan for collaboration outreach efforts with CMS Central Office staff, other CMS Regional Offices, State Survey Agencies, Quality Improvement Organizations, Provider Associations and the State Ombudsman. The CMS Atlanta Regional Office convened conference calls with State Survey Agency Directors and Quality Improvement Organizations (QIOs). It was identified that a need existed for a face-to-face meeting to include Nursing Home Associations and Ombudsman representatives.

In September 2006 a new coalition based campaign—Advancing Excellence in America's Nursing Homes—was launched. This campaign, the first voluntary, non-punitive, non-regulatory, national effort to help nursing homes to measurably improve the quality of care and quality of life for those living or recuperating in America's nursing homes, selected a total of eight goals, 4 clinical and 4 organizational. Technical assistance materials and other resources to help nursing homes achieve results on the goals were posted on the website. Webinars were held on each goal and made available to nursing homes. The first face-to-face meeting was held in Atlanta on December 12, 2006. Many success stories by the QIOs were given during this meeting that described the reductions of restraints and pressure ulcers in nursing homes – two of the targeted clinical goals. By 2009, with two full years of data available, almost half of all nursing homes in the nation participated in the Phase I Campaign. The Campaign met two of its goals; nationally, the use of daily restraints was reduced to 5%, with 30% of nursing homes at 0%, and another quarter below 3% ,and symptoms of pain in the long-stay resident were reduced to 5%. By the end of the 2013, Tennessee was below the national average for prevalence of high risk pressure ulcers, and managed pain in long and short stay nursing home residents better than the national average. However, Tennessee was higher than the national average in use of daily physical restraints.

In August, 2016, as a result of the success of initial campaign phases, The Advancing Excellence in Long Term Care Collaborative (AELTCC) transferred operation of its project, Advancing Excellence in America's Nursing Homes Campaign, to the Centers for Medicare & Medicaid Services (CMS) which rebranded it as The National Nursing Home Quality Improvement (NNHQI) Campaign. NNHQI Campaign efforts continued its quality improvement efforts through July of 2018. It (4) organizational goals and (5) clinical goals – see Table 1.

TABLE 1. Nursing Home Quality Improvement Goals



The National Nursing Home Quality Improvement (NNHQI) Campaign continued its work providing long term care providers, consumers and their advocates, and quality improvement professionals with free, easy access to evidence-based and model-practice resources to support continuous quality improvement; encouraging all nursing homes in the country to register through their website¹⁰, use the Circle of Success for guidance and the data collection tools and resources for quality improvement, and enter their aggregate data in the secure website section, a required step for active participation.

¹⁰ <https://www.nhqualitycampaign.org/>

Campaign participation helped nursing homes improve the quality of care and quality of life for the more than 1.5 million residents of America's nursing homes. A well designed website with a rich array of goal related resources ensured every nursing home easy access to free, evidence-based practical materials to help with their quality improvement activities. To be an active participant in the NNHQI Campaign, a nursing home minimally had to during the first year:

1. Select two goals on which they would work.
 - Adopt one organizational goal (consistent assignments, staff stability, reducing hospitalizations or person-centered care) and enter monthly data on that goal.
 - Adopt a clinical goal (pain, pressure ulcers, mobility, infections or medications) for which monthly data entry is optional in the first year but must be worked on in the second year unless the nursing home felt it had the interest and capacity to move on the clinical goal sooner.
2. After the first year a nursing home could continue with the two goals of the first year, entering data for both, or adopt additional goals as desired. Active participant status on a goal **required at least six consecutive months of monthly data submissions on the goal.**

Prior to the 2014 year it was possible for nursing homes to register and to be counted as "participating" without submitting outcomes data. As of 2014 that was no longer the case. Homes that registered on the website, but did not select goals or did not enter aggregate data on the website were referred to as "registered homes". This revision promoted data integrity and data extrapolation of participating homes only. To maintain registration, at least one organizational goal AND one clinical outcome goal had be selected

Registration Statistics of each state captured on the website as compared to the nation, identifies Tennessee with a 92.4% registrations rate in 2018, with ~ 89% (281) of those registered nursing homes having also selected at least one Organizational Goal and one Clinical Goal to work on.

	Tennessee	Nation
Registrant nursing homes that had selected goals¹¹:	292	9,855
*Percentage of registrant nursing homes:	92.4%	62.2%

*In TN, enrollment saw a percent increase in 2018 above 2017 by ~3.4% , while in the nation, a smaller percent increase in enrollment by ~ 1.0%.

¹¹ Data found in this subsection for The National Nursing Home Quality Improvement campaign coalition may be viewed at <https://www.nhqualitycampaign.org/participationMaps.aspx>

Antipsychotic Drug Use Reduction Initiative:

In March 2012, The Centers for Medicare and Medicaid Services (CMS) launched a national initiative, the National Partnership to Improve Dementia Care, aimed at improving behavioral health and reducing the use of unnecessary antipsychotic medications, as well as other potentially harmful medications in nursing homes and eventually other care settings as well. The partnership catalyzed a broad range of activities by provider organizations and others, and ultimately led to the formation of state-based coalitions to improve dementia care in every state. Further, CMS partnered with the American Health Care Association (AHCA) in this nationwide initiative to reduce antipsychotic drug use among nursing home residents by 15% by December 31, 2012 and further reduce those rates in 2013. As part of the initiative, CMS developed a national action plan using a multidimensional approach to improve care for individuals with dementia that included public reporting, raising public awareness, regulatory oversight, technical assistance, provider and consumer education and research. The Partnership included consumers, advocacy organizations, nursing home staff, and professional associations, such as The American Medical Director's Association (AMDA), The Society for Post-Acute and Long-Term Care Medicine, American Health Care Association (AHCA), LeadingAge, and Advancing Excellence in America's Nursing Homes.

Prior to the March 2012 commencement of this initiative, Tennessee had the highest usage of antipsychotic medications in the Southeast Region at 30.3% for long-stay residents, as compared to the national average of 22.2%. The Tennessee Department of Health Office of Health Care Facilities received grant approval from the federal Centers for Medicare and Medicaid Services to expend more than \$370,000 in federal civil monetary penalty funds collected from nursing homes with deficient practices, to provide special training for every certified nursing home in Tennessee in the reduction of antipsychotic drug use among nursing home residents, especially those with dementia.

The CMS funding enabled TDH, in partnership with the Tennessee Advancing Excellence Coalition (TN-AEC) members, to provide a three day symposium in each of the Grand Divisions of the state which focused on how to effectively reduce antipsychotic drug therapy, address the root cause of behaviors and improve quality of life for residents living with dementia. The educational sessions were facilitated by The Eden Alternative, a stakeholder in the TN-AEC. Educational sessions were conducted in Nashville, Knoxville and Memphis Tennessee.

Tennessee nursing home's did not achieve the initial 15% reduction by the designated December 31, 2012 (Q42012), timeframe. However, during Q1 (January-March) 2013 antipsychotic medication usage rate in Tennessee dropped by 17.4% to 25.02, exceeding the initial (phase 1) 15% reduction target. Tennessee continued to experience a significant decline in antipsychotic medication use such that by Q2 2013 the antipsychotic usage rate was 23.87, a 21.2% usage decrease since the initiative began in March 2012.

In September 2014, the National Partnership to Improve Dementia Care announced that it met its initial goal of reducing the national prevalence of antipsychotic use in long-stay nursing home residents by 15.1 percent. It also announced a new goal of a 25 percent reduction by the end of 2015, and a 30 percent reduction by the close of 2016, using the prior baseline rate (fourth quarter of 2011).

In Q2 (June) 2016, the national reduction rate of antipsychotic medication use in nursing homes since initiative implementation was 30.9%. Over the same period of time Region IV reduction rate was 31.7%, and that of Tennessee was 37.5% which exceeded both the region and the nationwide percent reduction. By Q2 2016, Tennessee had already achieved the Q4 2016 reduction goal.

As of Q4 2018, currently the last quarter of available data, antipsychotic medication use in Tennessee nursing homes was at 14.8%, a 50.7% reduction since the implementation of the national initiative, just slightly above the prevalence rate of the Region IV states average (14.2%).

Additional federal funding resources through the Civil Monetary Penalty (CMP) funds program continued to be awarded to Tennessee nursing homes to educate and train facility staff in best practices for quality of care and quality of life without the use of antipsychotic medication. This further promoted a continued steady decline in unnecessary antipsychotic use prevalence in Tennessee nursing homes and hospitals.

Not all facilities in all states however had achieved in 2018 by Q4 the expected reductive success in antipsychotic medication usage. Excluding facilities caring for large resident populations requiring antipsychotics, there were some in each state that had made little to no progress in decreasing their antipsychotic medication use, with some having actually increased since the start of the 2012 National Partnership reduction initiative. There were twenty-seven (27) such Tennessee facilities. For these (27) Tennessee facilities, identified as “Late Adopters”, the Department of Health’s Office of Health Care Facilities began working collaboratively with the quality improvement organization (QIO), the nursing home association, and other stakeholders to refocus efforts specifically toward these “late adopters” to understand the barriers and decrease antipsychotic medication use in this population.

CMS- HHS New Quality Initiatives

In 2019, the Quality Innovation Network of Quality Improvement Organizations (QIN-QIO) begun nearly 15 years ago came to a terminus in one respect and began a new chapter in the nations quality improvement initiatives in nursing homes. The Centers for Medicare and Medicaid Services and Health and Human Services (CMS-HHS) toward the end of 2019 awarded a five-year contract to Alliant Health Solutions (AHS) to serve as a Quality Innovation Network – Quality Improvement Organization (QIN-QIO) under the federally launched 12th Statement of Work (SOW) contract. QIN-QIOs serving under the 12th SOW will provide targeted assistance to nursing homes and communities in small and rural practices, those serving the most vulnerable populations, and those in need of customized quality improvement.

The QIN-QIO contract tasks AHS to provide services to seven states including Alabama, Florida, Georgia, Kentucky, Louisiana, North Carolina and Tennessee. Alliant Quality, the quality improvement services group of Alliant Health Solutions is responsible for improving quality in nursing homes, as well as small and rural communities and those serving vulnerable populations by:

- Improving Behavioral Health Outcomes – Including Opioid Misuse
- Increasing Patient Safety

- Increasing Chronic Disease Self-Management
- Increasing the Quality of Care Transitions
- Improving Nursing Home Quality

Alliant Quality in conjunction with CMS has not as yet published outcomes from the nearly one year of work with NHs under the 12th SOW. We await those specifics to understand this next phase of “customized quality improvement” in Tennessee nursing homes and its impact on the quality of care/quality of life of nursing home residents within this new decade.